

9/9/11 US MARKUP OF CDE 8/29/11 DRAFT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA and)	
THE STATE OF NEW JERSEY)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
CORNELL-DUBILIER ELECTRONICS,)	
INC.,)	
)	
Defendant.)	
)	

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), the National Oceanic and Atmospheric Administration of the United States Department of Commerce (“NOAA”), and the Fish and Wildlife Service of the United States Department of the Interior (“DOI”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Cornell-Dubilier Electronics Superfund Site in South Plainfield, Middlesex County, New Jersey (the “Site”), and seeking natural resource damages Natural Resource Damages.

B. The State of New Jersey (the “State”) has also filed a complaint against the defendant in this Court alleging that the defendant is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, the Industrial Site Recovery Act, N.J.S.A. 13:1K6 *et seq.*, and the common law of nuisance, negligence and strict liability, all with respect to the Site. The State in its complaint seeks reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Site, and seeks natural resource damages Natural Resource Damages.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 28, 1998. 63 Fed. Reg. 40182-01.

D. From 1994 through 1998, EPA sampled the soil, sediment, buildings and air at the Site. On March 31, 1999, in response to a release or a substantial threat of a release of a hazardous substance at or from the Site, EPA commenced a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

E. In 1998 and 1999, Cornell-Dubilier Electronics, Inc. (“CDE”) entered into two separate Administrative Orders on Consent pursuant to which CDE agreed to perform removal actions to address contamination at thirteen residential properties in South Plainfield in the vicinity of the former Cornell-Dubilier Electronics facility (the “Facility”) located at 333 Hamilton Boulevard, South Plainfield, New Jersey.

F. On or about September 30, 2003, EPA issued a Record of Decision (“ROD”) for Operable Unit 1 (“OU 1”) of the Site, selecting a remedial action for contaminated residential, commercial and municipal properties in South Plainfield, in the vicinity of the Facility. The OU 1 remedy consists of excavating soil with concentrations of polychlorinated biphenyls (“PCBs”) in excess of 1 part per million and disposing of it off-Site, interior cleaning to remove PCB-contaminated dust, and the investigation of additional properties in a defined study area during the remedial design phase to determine which, if any, additional properties will require remediation.

G. On or about September 30, 2004, EPA issued a ROD for OU 2 of the Site. The OU 2 remedy addresses contaminated soils and buildings at the Facility. It calls for demolition of the Facility buildings, excavation and off-Site disposal of buried capacitors and some of the contaminated soils, on-Site treatment by thermal desorption of contaminated soils, and capping of the remainder. EPA has completed the building demolition, excavation and off-Site disposal of the buried capacitors and associated soils, and thermal desorption, and anticipates that the final steps of the OU 2 remedy, including off-Site disposal of soil that could not be treated, and

capping, will be completed in 2012.

H. EPA is performing the RI/FS for OU 3 (addressing contaminated Site groundwater) and OU 4 (addressing contaminated soil and sediments in the Bound Brook).

I. As of February 28, 2011, EPA had incurred response costs at the Site of at least \$118,090,074. EPA has recovered past costs of \$203,249 in an administrative settlement with D.S.C. of Newark Enterprises, Inc., the current owner of the Facility. EPA also recovered \$5,799,341.58 from the bankruptcy proceeding of Dana Corporation, a former owner of the Site, in resolution of EPA's Proof of Claim. EPA will incur additional response costs in the future as it continues investigating and remediating the Site. EPA estimates that its response costs for the Site will total approximately \$X million.

J. Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), provides for recovery of damages for injuries to, destruction of, or loss of natural resources caused by releases of hazardous substances to the environment. Injured resources may include, but are not limited to, birds, mammals, fish and other wildlife, plants, and their supporting habitats at or near the facilities. CERCLA specifies that the United States, acting through NOAA and DOI, among other agencies, and the State, acting through the New Jersey Department of Environmental Protection, are authorized to act on behalf of the public as trustees of natural resources to recover such damages, as well as the reasonable costs of assessing the injury, destruction, or loss. Under CERCLA and the governing natural resource damage assessment regulations, the measure of damages includes the cost to restore, replace, or acquire the equivalent of the injured natural resources, plus the reasonable costs of assessing the damages. NOAA and DOI presently estimate that the aforementioned Natural Resource Damages at the Site are between \$28 million and \$53 million. NOAA and DOI recovered \$185,407.75 from the bankruptcy proceeding of Dana

Corporation in resolution of their Proof of Claim with respect to the Site filed in that proceeding.

K. The United States has reviewed Financial Information and Insurance Information submitted by CDE to determine whether CDE is financially able to pay response costs incurred and to be incurred and Natural Resource Damages at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that CDE has limited financial ability to pay for response costs incurred and to be incurred and Natural Resource Damages at the Site.

L. In the New Jersey Coverage Action, CDE is currently seeking to recover insurance proceeds relating to the Site allegedly due under a number of policies written by various insurers. The insurance companies that are named in the New Jersey Coverage Action refused to provide a defense or indemnity to CDE with respect to claims against CDE relating to the Site.

M. The United States, the State, and CDE agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over CDE. Solely for the purposes of this Consent Decree and the underlying complaints, CDE waives all objections and defenses that it may have to jurisdiction of the Court or

to venue in this District. CDE consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State, and upon CDE and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of CDE under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Allstate Settlement" shall mean the Settlement Agreement entered into by CDE, Federal Pacific Electric Company ("FPE"), and Allstate Insurance Company ("Allstate"), signed by Allstate on January 19, 2005, resolving the claims of CDE and FPE in connection with the Site under certain insurance policies issued by a predecessor-in-interest of Allstate, Northbrook Insurance Company.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XVIII). In the event of conflict between the body of this Consent Decree and any appendix, the body of this Consent Decree shall control.

d. The term “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. “DOI” shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

f. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

g. “Effective Date” shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

h. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

i. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. “Financial Information” shall mean those financial documents identified in Appendix B.

k. “Insurance Claims” shall mean (1) those causes of action asserted, or which are in the future asserted, by CDE against insurance companies pursuant to the terms of insurance contracts, and related agreements, for defense, indemnity, bad faith, and attorneys fees, in connection with Plaintiffs’ claims under the environmental laws concerning the Site or the Site among other sites; (2) those causes of action asserted, or which are in the future asserted, by CDE for defense, indemnity, bad faith, and attorneys fees in the New Jersey Coverage Action; (3) all demands by CDE for payment pursuant to the Allstate Settlement; and

(4) all claims concerning the Site or the Site among other sites asserted by CDE against insolvent insurers, or insurers in any insolvency, receivership, liquidation, regulatory supervision, scheme of arrangement (solvent or insolvent), or similar proceeding, including all such proceedings relating to The Home Insurance Company or to any subscribers or participants in any London Market insurance coverage.

l. “Insurance Information” shall mean those insurance documents identified in Appendix C.

m. “Insurance Proceeds” shall mean (1) any money recovered by or on behalf of CDE in connection with any of the Insurance Claims after the date CDE submits to the United States its signature page to this Consent Decree; and (2) the money currently held by counsel on behalf of CDE that was received pursuant to Paragraph 4.1 of the Allstate Settlement.

n. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

o. “Natural Resource Damages” shall mean damages recoverable pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to, destruction of, or loss of natural resources at the Site including, but not limited to, costs of assessment and costs of restoring, replacing or acquiring the equivalent of injured or lost natural resources.

p. “New Jersey Coverage Action” shall mean *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5192-96, MER -L-2773-02, and MER-L463-05 (N.J. Super. Mercer County).

- q. “NOAA” shall mean the National Oceanic and Atmospheric Administration and any successor departments, agencies or instrumentalities of the United States.
- r. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- s. “Parties” shall mean the United States, the State, and CDE.
- t. “Plaintiffs” shall mean the United States on behalf of EPA, NOAA and DOI, and the State.
- u. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- v. “Site” shall mean the Cornell-Dubilier Electronics, Inc. Superfund Site, encompassing approximately 26 acres and located in South Plainfield, Middlesex County, New Jersey. The Site is generally shown on the map that is Appendix A and includes all areas to which contamination has migrated from the Facility, but does not include the Woodbrook Road Superfund Site (also known as the Dismal Swamp Site) in South Plainfield, New Jersey.
- w. “State” shall mean the State of New Jersey.
- x. “State Response Costs” shall mean all costs incurred or to be incurred by the State or its political subdivisions or their agents or any person with written approval from the State, at or in connection with the Site and in the (i) removal or attempted removal of hazardous substances, or (ii) taking of reasonable measures to prevent or mitigate damage to the public health, safety or welfare, including but not limited to public or private property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to Sections 1 through 11 of P.L. 1991, c. 373 (C.58:10-23.1 1f(8) through 58:10-23.1 1f(19)), pursuant to N.J.S.A. 58:10-23.1 1b. State

Response Costs shall not include amounts reimbursed to the State by EPA.

y. “Trustees” shall mean the trustees for natural resources at the Site, including DOI, NOAA, and the New Jersey Department of Environmental Protection.

z. “United States” shall mean the United States of America, and each department, agency, and instrumentality of the United States, which includes without limitation EPA, and the federal Trustees.

V. OBJECTIVES

4. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the implementation of response actions at the Site, to reimburse response costs of the Plaintiffs, and to resolve the claims of the Plaintiffs against CDE as provided in this Consent Decree.

VI. JUDGMENT

5. CDE hereby stipulates to liability to the United States and the State for claims asserted in the Complaints in this consolidated action under Section 107 of CERCLA, and under, *inter alia*, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, in the amount of \$_____. [WE CONTINUE TO THINK THAT THE STIPULATION SHOULD BE BETWEEN 75% AND 80% OF THE COMBINED ESTIMATE OF CLEANUP COSTS AND NRD, GIVEN THE ISSUES WE HAVE RAISED ABOUT THE OU-2 REMEDY AND THE CONTROL OF THE SITE EXERCISED BY THE GOVERNMENT DURING WORLD WAR II]\$_____ [80% of the combined total of response costs and NRD]. By so stipulating, CDE does not admit to liability for any intentional violation of law but only to strict and retroactive liability arising from acts or omissions that CDE asserts it did not know, expect, or

intend at the time would cause harm or liability.

6. With respect to the claims asserted by the United States, for EPA's response costs, judgment is hereby entered against CDE in the amount of \$_____, of which \$_____ is for EPA's response costs, incurred and to be incurred, at the Site; and \$_____ is for Natural Resource Damages.\$_____. The United States can recover on this judgment only in the manner and to the extent provided in this Consent Decree.

7. With respect to the Natural Resource Damages claims asserted by the Trustees, judgment is hereby entered against CDE in the amount of \$_____. The Trustees can recover on this judgment only in the manner and to the extent provided in this Consent Decree.

7.8. With respect to the claims asserted by the State for State Response Costs, judgment is hereby entered against CDE in the amount of \$_____ \$_____ [7% of which \$_____ is for State Response Costs at the Site and \$_____ is for Natural Resource Damages.EPA response costs]. The State can recover on this judgment only in the manner and to the extent provided in this Consent Decree.

8.9. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and CDE.

VII. INSURANCE CLAIMS

9.10. CDE shall use best efforts, including, but not limited to, litigation, to maximize the Insurance Proceeds. The term "best efforts" shall not require CDE to pursue claims other than the Insurance Claims.

10.11. Notice and Demand to Insurance Companies

a. No later than five (5) days after the lodging of this Consent Decree, if CDE has not already done so, CDE shall provide notice of this Consent Decree to each of the insurance

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companies against which CDE has asserted a claim under the policies identified in Appendix E.

b. No later than ten (10) days after the Effective Date, if CDE has not already done so, CDE shall submit a written demand for payment of the amounts required under Paragraphs 6, 7, and 78 of this Consent Decree (or the policy limits, whichever is lower) under each insurance policy identified in Appendix E.

11.12. Escrow Account for Insurance Claim Litigation Expenses

a. Within fourteen (14) days of submitting to the United States its executed signature page to this Consent Decree, CDE shall deposit \$1,250,000.00 into an interest-bearing escrow account (the "Litigation Expenses Escrow Account"), to be held solely for the purposes of satisfying CDE's litigation expenses incurred after creation of the escrow account in prosecuting the Insurance Claims, paying the fees, including tax preparation fees, associated with the Litigation Expenses Escrow Account, and paying any taxes on interest earned on the funds in the Litigation Expenses Escrow Account. CDE shall make subsequent deposits to the Litigation Expenses Escrow Account of \$1,000,000.00 on the first and second anniversaries of the Effective Date of this Consent Decree, provided however, that if any withdrawal reduces the balance of the Account to below \$100,000.00, then no later than twenty (20) days after such withdrawal CDE shall deposit into the Litigation Expenses Escrow Account additional funds sufficient to bring the Account balance up to at least \$200,000.00. The amounts of any such deposits made to replenish the Litigation Expenses Escrow Account may be deducted from the next annual payment due pursuant to this Paragraph 11.12.a. CDE shall continue funding the Litigation Expenses Escrow account in accordance with the procedures set forth in this Paragraph 11.12.a and in Paragraph 11.12.b hereof until such time as CDE's deposits to the Account have totaled \$3.25 million.

b. CDE shall make the deposits to the Litigation Expenses Escrow Account required by Paragraph 1112.a even if the Insurance Claims have been resolved. To the extent that funds remain in the Account after the resolution of all Insurance Claims, those funds shall be considered Insurance Proceeds subject to the distributions prescribed under the terms of Section VIII hereof.

c. The escrow agent of the Litigation Expenses Escrow Account shall be selected by CDE but shall be subject to approval by EPA. Other than as set forth in Paragraph 1112.a, no funds may be withdrawn from the Litigation Expenses Escrow Account. The Account shall be established in accordance with the escrow agreement attached as Appendix F to this Consent Decree or as otherwise agreed in writing by CDE and the United States.

d. If any of the Insurance Claims remain unresolved and the \$3.25 million (plus any accrued interest) has been fully utilized in the prosecution of such claims, prosecution of such unresolved Insurance Claims shall thereafter be carried out on behalf of CDE by counsel pursuant to a contingent fee arrangement consistent with this Consent Decree. Such arrangement shall provide for “best efforts” toward the continued prosecution of the Insurance Claims until resolution, whether through trial and appeal(s), if necessary, or settlement. All proceeds from such continued prosecution of Insurance Claims shall be considered Insurance Proceeds under this Consent Decree and any fees due to counsel under the contingent fee arrangement referenced above shall not operate to reduce the amount of Insurance Proceeds due to the United States and the State pursuant to Section VIII of this Consent Decree.

e. The contingent fee agreement between CDE and counsel for the continued litigation of the Insurance Claims shall be subject to approval by the United States.

f. If this Consent Decree is not entered, all funds remaining in the Litigation

Expenses Escrow Account shall be released from escrow and returned to CDE within twenty (20) days of the date of the court order denying entry.

12.13. CDE shall provide the United States with a quarterly written report describing the status of the Insurance Claims and the efforts that CDE has made during that quarter to secure Insurance Proceeds. Such reports shall include copies of any filings, transcripts, or rulings in litigation undertaken by CDE in order to recover Insurance Proceeds. Such reports shall also include copies of any settlement agreement resolving one or more Insurance Claims. Such reports shall include copies of the Escrow Account statements and copies of any invoices submitted to the Escrow Agent for payment during the preceding quarter. Unless otherwise agreed to in writing by the Parties, the first report shall be due thirty (30) days after the Effective Date and reports shall be required until CDE provides a written certification that all Insurance Claims have been resolved.

13.14. Within ten (10) days of CDE's receipt of notice that it is to be paid Insurance Proceeds, CDE shall provide the United States with written notice thereof. CDE's notice to the United States shall include copies of any correspondence or written information received from any insurance company or indemnitor of any insurance company regarding any amounts that will be paid to or on behalf of CDE.

VIII. PAYMENTS

14.15. CDE - Payments to the United States and the State

a. In addition to the payments required under Paragraph 1516, and pursuant to the procedures set forth in Paragraph 1920.a, CDE shall make three payments of \$344,000 each to the United States. CDE shall make the first payment within thirty (30) days after the Effective Date, shall make the second payment on the first anniversary of the Effective Date, and shall make the

Comment [A1]: Once NRD amount is determined, this number needs to be increased to reflect fact that state's share is 7% of EPA response costs, not 7% of the whole. Overall amount of payments (\$1.11 million) will remain unchanged. RKE

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third payment on the second anniversary of the Effective Date. CDE shall pay Interest on the second and third such payments, calculated from the date of lodging of this Consent Decree through the date of payment of the amounts specified in this Paragraph 1415.a.

b. In addition to the payments required under Paragraph 1617, and pursuant to the procedures set forth in Paragraph 2122, CDE shall make three payments of \$26,000 each to the State. CDE shall make the first payment within thirty (30) days after the Effective Date, and shall make the second and third payments on the first and second anniversaries of the Effective Date. CDE shall pay Interest on ~~the~~ on the second and third such payments calculated from the date of lodging of this Consent Decree through the date of payment of the amounts specified in this Paragraph 1415.b.

Comment [A2]: Once NRD amount is determined, this number needs to be reduced. RKE

15.16. CDE - Payments to the United States

After the Effective Date and in full satisfaction of the judgment amount set forth in ParagraphParagraphs 6 and 7 (but without affecting the deposits required pursuant to Paragraph 1112 and the payments required pursuant to Paragraph 1415.a), CDE shall pay to the United States, within twenty (20) days of receipt, and pursuant to the procedures set forth in Paragraph 2122:

- a. 93.0% of the Insurance Proceeds recovered under the Allstate Settlement;
- b. 77.6% of that portion of the total recovered Insurance Proceeds up to and including \$20,000,000.00, excluding sums recovered under the Allstate Settlement; plus
- c. 70.2% of that portion of the total recovered Insurance Proceeds exceeding \$20,000,000.00 up to and including \$50,000,000.00, excluding sums recovered under the Allstate Settlement; plus
- d. 73.7% of that portion of the total recovered Insurance Proceeds exceeding

\$50,000,000.00 up to and including \$75,000,000, excluding sums recovered under the Allstate Settlement; plus

e. 76.3% of that portion of the total recovered Insurance Proceeds exceeding \$75,000,000.00 up to and including \$100,000,000.00, excluding sums recovered under the Allstate Settlement; plus

f. 77.2% of that portion of the total recovered Insurance Proceeds exceeding \$100,000,000.00, excluding sums recovered under the Allstate Settlement.

16.17. CDE - Payments to the State

After the Effective Date and in full satisfaction of the judgment amount set forth in

Paragraph 78 (but not including the deposits required pursuant to Paragraph 1112 and the payments required pursuant to Paragraph 1415.b), CDE shall pay to the State, within twenty (20) days of receipt, and pursuant to the procedures set forth in Paragraph 2122:

a. 7.0% of the Insurance Proceeds recovered under the Allstate Settlement;

b. 5.8% of that portion of the total recovered Insurance Proceeds up to and including \$20,000,000.00 excluding sums recovered under the Allstate Settlement; plus

c. 5.3% of that portion of the total recovered Insurance Proceeds exceeding \$20,000,000.00 up to and including \$50,000,000.00, excluding sums recovered under the Allstate Settlement; plus

d. 5.6% of that portion of the total recovered Insurance Proceeds exceeding \$50,000,000.00 up to and including \$75,000,000, excluding sums recovered under the Allstate Settlement; plus

e. 5.7% of that portion of the total recovered Insurance Proceeds exceeding \$75,000,000.00 up to and including \$100,000,000.00, excluding sums recovered under the

Comment [A3]: Once NRD amount is determined these percentages need to be reduced and the US percentages increased because state's share is 7% of EPA response costs, not 7% of the whole. CDE percentage to remain the same. RKE

Allstate Settlement; plus

f. 5.8% of that portion of the total recovered Insurance Proceeds exceeding \$100,000,000.00, excluding sums recovered under the Allstate Settlement.

17.18. The Insurance Proceeds remaining after payment in accordance with Paragraphs 1516 and 1617 shall be placed by CDE in an interest-bearing escrow account (the “Proceeds Escrow Account”). Funds in the Proceeds Escrow Account shall be used by CDE to pay monies incurred after After CDE submits its signature page to the Consent Decree with respect to funds in the Proceeds Escrow Account shall be used by CDE solely to pay any of the following : (1) fees, including tax preparation fees, associated with the Proceeds Escrow Account and any taxes on interest earned on the funds in the Proceeds Escrow Account; (2) fees due to counsel under the contingent fee arrangement approved pursuant to Paragraph 1112.f; (3) nt fees or costs incurred with respect to defense or resolution (whether by settlement or payment of any judgment) of any claims asserted against CDE under environmental laws or relating to environmental conditions at any site. [A PRIORITY IS UNWORKABLE AND UNACCEPTABLE TO CDE – THE PARAGRAPH ESTABLISHES THE LEGITIMATE PURPOSES FOR WHICH THE MONIES CAN BE SPENT AND CDE HAS TO HAVE THE DISCRETION HOW TO ENCUMBER THE ESCROW DOLLARS CONSISTENT WITH THOSE PURPOSES]CERCLA.

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18.19. In addition to the Interest due on payments by CDE pursuant to Paragraph 2223, CDE shall pay additional Interest on its payment amounts due pursuant to Paragraph 1415 calculated as follows:

a. if CDE executes and returns this Consent Decree to the United States on or before 21 days after CDE receives an execution copy of the Consent Decree, no additional Interest shall

accrue;

b. if CDE executes and returns this Consent Decree to the United States more than 21 days after it receives an execution copy of the Consent Decree, additional Interest shall be paid until the date of lodging of this Consent Decree. CDE shall make any payment required by this Paragraph 18¹⁹ pursuant to the procedures set forth in Paragraph 19²⁰.a.

19.20. Instructions for All Payments to the United States by CDE

a. Any payments by CDE to the United States required under this Consent Decree which are less than \$9.9 million shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to CDE by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of New Jersey after the Effective Date. Any payments to the United States exceeding \$9.9 million may be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, and in accordance with instructions provided to CDE by the FLU after the Effective Date. The FLU shall provide the payment instructions to: Victor Whitworth, Chief Financial Officer, Cornell-Dubilier Electronics, Inc., 140 Technology Place, Liberty, SC 29657, vwhitworth@cde.com, on behalf of CDE. CDE may change the individual to receive payment instructions on its behalf by providing written notice of such change in accordance with Section XVI (Notices and Submissions).

b. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number. All payments to the United States by CDE shall reference the CDCS Number, EPA Site/Spill ID Number 02-GZ and DOJ Case Number 90-11-2-08223/2. [Trustees to provide any specific payment details they require].

c. At the time of any payment to the United States, CDE shall send notice to the

United States and EPA in accordance with Section XVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number 02-GZ, and DOJ Case Number 90-11-2-08223/2.

d. Any payment received after 4:00 p.m. Eastern Time shall be credited on the next business day.

20.21. Application of Payments to the United States

Upon receipt of payments to the United States under this Consent Decree, the United States shall apply the funds as follows: (i) [EPA percentage] shall be deposited in the Cornell-Dubilier Electronics Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.; (ii) [FWSTrustee percentage] shall be deposited in a Site-specific sub-jointly controlled account within DOI's Natural Resource Damage Assessment and Restoration Fund; and (iii) [NOAA percentage] shall be deposited in NOAA's Damage Assessment and Restoration Revolving Fund.[name?].

21.22. Instructions for All Payments to the State

Payments to be made to the State under this Consent Decree shall be in the form of a certified or cashier's check. The check shall be made payable to "Treasurer, State of New Jersey" and shall reference State of New Jersey v. Cornell-Dubilier Electronics, Inc. The check shall be sent to:

Attn: Section Chief
Hazardous Site Litigation Section
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
Post Office Box 093
Trenton, New Jersey 08625-0093

IX. FAILURE TO COMPLY WITH CONSENT DECREE**22.23. Interest on Late Payments**

If CDE fails to make any payment to the United States or the State under Section VIII by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

23.24. Stipulated Penalties

a. If any amounts due to the United States under Section VIII are not paid by the required date, CDE shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, in addition to the Interest required by Paragraph 2223, 1% of the amount of the late payment per day that such payment is late.

b. If any amounts due to the State under Section VIII are not paid by the required date, CDE shall be in violation of this Consent Decree and shall pay to the State, as a stipulated penalty, in addition to the Interest required by Paragraph 2223, 0.5% of the amount of the late payment per day that such payment is late.

c. If CDE does not comply with Section XIV (Access to Information) or Section XV (Retention of Records and Certification), CDE shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, \$750 per violation per day of such noncompliance.

d. If CDE does not comply with Section XIV (Access to Information) or Section XV (Retention of Records and Certification), CDE shall be in violation of this Consent Decree and shall pay to the State, as a stipulated penalty, \$375 per violation per day of such noncompliance.

e. If CDE does not comply with the requirements of Section VII (Insurance Claims),

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CDE shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, \$1500 per violation per day of such noncompliance.

f. If CDE does not comply with the requirements of Section VII (Insurance Claims), CDE shall be in violation of this Consent Decree and shall pay to the State, as a stipulated penalty, \$750 per violation per day of such noncompliance.

g. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by the United States or the State.

h. All payments to the United States under this Paragraph shall be made in accordance with the procedures in Paragraph 2021 and, in addition, shall be identified as “stipulated penalties.”

i. All payments to the State under this Paragraph shall be made in accordance with the procedures in Paragraph 2122 and, in addition, shall be identified as “stipulated penalties.”

j. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State has notified CDE of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

24.25. If the United States or the State brings an action to enforce this Consent Decree due to a failure of CDE to comply with this Consent Decree, CDE shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

25.26. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of CDE’s failure to comply with the requirements of this

Consent Decree.

26.27. Notwithstanding any other provision of this Section, the United States and/or the State may, in their unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VIII (Payments) or from performance of any other requirements of this Consent Decree.

X. COVENANTS NOT TO SUE BY PLAINTIFFS

27.28. United States

In consideration of the payments that shall be made by CDE under the terms of this Consent Decree and except as specifically provided in Section XI (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against CDE or, to the extent set forth in Paragraph 3031 hereof, its former corporate parent FPE, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. §673, and Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321 6973, with regard to the Site. [THE GOVERNMENT HAS GIVEN THIS COVENANT IN NUMEROUS OTHER CONSENT DECREES, INCLUDING THE NORWOOD SITE DECREE] With respect to present and future liability, these covenants shall take effect upon receipt by EPA and the Trustees of all payments required by Section VIII (Payments) and any Interest or Stipulated Penalties due thereon under Section IX (Failure to Comply with Consent Decree). These covenants not to sue are conditioned upon the satisfactory performance by CDE of its obligations under this Consent Decree, including but not limited to:

1) payment of all amounts due under Section VIII (Payments), including any conditional

payment obligations; 2) all obligations of Section VII (Insurance Claims); and 3) payment of any Interest or stipulated penalties due under Section IX (Failure to Comply with Consent Decree).

28.29. State of New Jersey

In consideration of the payments that shall be made by CDE under the terms of this Consent Decree and except as specifically provided in Section XI (Reservation of Rights by Plaintiffs), New Jersey covenants not to sue or to take administrative action against CDE or, the extent set forth in Paragraph 30~~31~~ hereof, its former corporate parent FPE pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, the Industrial Site Recovery Act, N.J. S.A. 13:1 K-6 *et seq.*, and the common law of nuisance, negligence and strict liability, with regard to the Site. With respect to present and future liability, these covenants shall take effect upon receipt by the State of all payments required by Section VIII (Payments) and any Interest or Stipulated Penalties due thereon under Section IX (Failure to Comply with Consent Decree). These covenants not to sue are conditioned upon the satisfactory performance by CDE of its obligations under this Consent Decree, including but not limited to: 1) payment of all amounts due under Section VIII (Payments), including any conditional payment obligations; 2) all obligations of Section VII (Insurance Claims); and 3) payment of any Interest or stipulated penalties due under Section IX (Failure to Comply with Consent Decree).

29.30. The covenants not to sue set forth in this Section are conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by CDE and the financial, insurance, and indemnity certification made by CDE in Paragraph 47~~48~~. If the Financial Information or the Insurance Information provided to EPA by CDE, or the certification made by CDE in Paragraph 47~~48~~, is subsequently determined by EPA

to be false or, in any material respect, inaccurate, CDE shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Paragraph 39~~40~~ shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' and/or the State's right to pursue any other causes of action arising from CDE's false or materially inaccurate information.

30.~~31.~~ The covenants not to sue set forth in this Section extend only to CDE and its former corporate parent, FPE, and do not extend to any other person. Notwithstanding any other provision in this Consent Decree, the covenant not to sue FPE only extends to FPE's potential derivative liability in connection with the Site, and does not extend to liability in connection with the Site that is the result of the consequences of the acts or omissions of FPE that were not known, agreed to or participated in by CDE, its directors, officers, or employees.

XI. RESERVATION OF RIGHTS BY PLAINTIFFS

31.~~32.~~ The covenants set forth in Section X above do not pertain to any matters other than those expressly specified in that Section. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against CDE with respect to all other matters, including but not limited to, the following:

- a. liability based on a failure by CDE to meet a requirement of this Consent Decree;
- b. criminal liability of CDE;
- c. liability based on the ownership or operation of the Site by CDE when such ownership or operation commences after signature of this Consent Decree;
- d. liability based on CDE's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of hazardous substances, pollutants, or contaminants at or in connection with the Site after signature of this Consent

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Decree;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

32.33. Notwithstanding any other provision of this Consent Decree, EPA, the Federal Trustees and the State reserve, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by CDE, or the certification made by CDE pursuant to Paragraph 4748, is false or in any material respect inaccurate.

XII. COVENANTS NOT TO SUE BY **CDE**

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33.34. CDE covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; or

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

34.35. Except as provided in Paragraph 3637 and Paragraph 4142, these covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an

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order pursuant to any of the reservations set forth in Section XI (Reservations of Rights by Plaintiffs), other than in Paragraph 3132.a (claims for failure to meet a requirement of the Consent Decree) or 3132.b (criminal liability), but only to the extent that CDE's claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

35.36 Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

36.37 CDE agrees not to assert any claims and to waive all claims and causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs and for natural resource damages and assessment costs relating to the Site, against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that CDE may have against any person if such person or any other person asserts a claim or cause of action relating to the Site against CDE.

37.38 Notwithstanding any other provision of this Consent Decree, CDE reserves, and this Consent Decree is without prejudice to, any claim or cause of action under Sections 107(a) and 113 of CERCLA that CDE may have against the United States, or any of its agencies or departments, other than EPA, as a potentially responsible party for the Site.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION

38.39 Except as provided in Paragraph 27, 28, 30, 3629, 31, 37 and Paragraph 4142, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 3637

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and Paragraph 41⁴², each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. 9613 § (f)(2) and (3), to pursue any such persons to obtain additional response costs or response action or to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). Nothing in this Consent Decree is intended to limit or otherwise restrict CDE's right to recoup from its insurers or any indemnitor of its insurers any of the sums CDE is paying or liability to which it is stipulating pursuant to this Consent Decree. [WE PROPOSED THIS AND YOU STRUCK IT, BUT WHY? IT SIMPLY INSURES THAT THE INSURERS CAN'T POINT TO ANYTHING IN THE CONSENT DECREE AS A BASIS FOR LIMITING CDE'S RECOVERY – ALL OF WHICH WOULD BE INSURANCE PROCEEDS]

39.40. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that CDE is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, and all Natural Resource Damages, at or in connection with the Site, by the United States, the State or any other person; provided, however, that if the United States or the State exercises rights under the reservations in Section XI (Reservation of

Rights by Plaintiffs), other than in Paragraphs 3132.a (claims for failure to meet a requirement of the Decree) or 3132.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or Natural Resource Damages that are within the scope of the exercised reservation.

40.41. CDE shall, with respect to any suit or claim brought by it for matters relatedpursuant to this Consent DecreeParagraph 38, notify EPA and DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim. [WHAT DOES THIS MEAN??] CDE shall, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, notify EPA and DOJ and the State in writing within 10 days of service of the complaint or claim upon it. In addition, CDE shall notify EPA and DOJ and the State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

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41.42. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, CDE shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiffs set forth in Section X.

XIV. ACCESS TO INFORMATION

42.43. CDE shall provide to EPA and the State, upon request, copies of all records,

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reports, or information (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to the implementation of this Consent Decree, ownership of the Site or operations at the Site, or other documents or information related to the Site.

43.44. Confidential Business Information and Privileged Documents

a. CDE may assert business confidentiality claims covering part or all of the Records submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA or the State, or if EPA has notified CDE that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to CDE.

b. CDE may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If CDE asserts such a privilege in lieu of providing records, it shall provide Plaintiffs with the following: 1) the title of the Record; 2) the date of the Record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the Record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. CDE shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in CDE’s favor. However, no Records created or generated pursuant to

the requirements of this or any other settlement with the United States or the State pertaining to the Site shall be withheld on the grounds that they are privileged or confidential.

44.45. No claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XV. RETENTION OF RECORDS AND CERTIFICATION

45.46. Until 10 years after the entry of this Consent Decree, CDE shall preserve and retain all non-identical copies of Records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

46.47. After the conclusion of the document retention period in the preceding Paragraph, CDE shall notify EPA, DOJ and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ or the State, CDE shall deliver any such Records to EPA or the State. CDE may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If CDE asserts such a privilege, it shall provide Plaintiffs with the following: 1) the title of the Record; 2) the date of the Record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the Record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. CDE shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in

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CDE's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the State shall be withheld on the grounds that they are privileged.

47.48. Certifications

a. CDE hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than non-identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA and State requests for information regarding the Site and CDE's financial circumstances, including but not limited to Insurance Information and indemnification information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and State law.

b. CDE hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time CDE executes this Consent Decree;

c. CDE hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has fully disclosed any information regarding the existence of, and payments due under, any insurance policies or indemnity agreements that may cover claims relating to its liability at the Site, and submitted to EPA such insurance policies, indemnity agreements, and information.

XVI. NOTICES AND SUBMISSIONS

48.49. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the State, and CDE, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

Re: DOJ Number 90-11-2-08223/2

As to EPA:

Cornell-Dubilier Electronics Site Remedial Project Manager
New Jersey Remediation Branch
United States Environmental Protection Agency
Region 2, 19th Floor
290 Broadway
New York, NY 10007-1866

Cornell-Dubilier Electronics Site Attorney
Office of Regional Counsel
United States Environmental Protection Agency
Region 2, 17th Floor
290 Broadway
New York, NY 10007-1866

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As to the State:

Insert name and address of State contact

As to CDE:

Cornell-Dubilier Electronics, Inc.

Robert S. Sanoff
Jonathan M. Ettinger
Foley Hoag LLP
155 Seaport Blvd
Boston, MA 02210
email: rsanoff@foleyhoag.com and jme@foleyhoag.com

XVII. RETENTION OF JURISDICTION

49.50. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

50.51. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the Site.

“Appendix B” is a list of the financial documents submitted to EPA by CDE.

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“Appendix C” is the list of insurance documents submitted to EPA by CDE.

“Appendix D” is [reserved].

“Appendix E” is the list of insurance policies.

“Appendix F” is the Escrow Agreement.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

51.~~52.~~ This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. CDE consents to the entry of this Consent Decree without further notice.

52.~~53.~~ If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

53. If for any reason, the Plaintiffs fail to lodge this Consent Decree with the Court within 60 days of receiving CDE’s executed signature page, CDE shall have the right in its discretion to withdraw its signature page and void the Consent Decree. [THIS PROVISION SEEMS NECESSARY SINCE CDE HAS AGREED TO FUND THE ESCROW BEFORE ENTRY OF THE DECREE, WHICH WOULD THEORETICALLY ALLOW THE GOVERNMENT TO WAIT FOR AS LONG AS IT WANTED TO SEE HOW THE INSURANCE LITIGATION TURNED OUT BEFORE DECIDING WHETHER TO LODGE THE CONSENT DECREE].

XX. SIGNATORIES/SERVICE

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54. Each undersigned representative of CDE, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, and [insert State official] certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

55. CDE agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified CDE in writing that it no longer supports entry of the Consent Decree.

56. CDE shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. CDE agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that CDE need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

SO ORDERED THIS ____ DAY OF _____, 2011

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and State of New Jersey v. Cornell-Dubilier Electronics, Inc., et al.*, relating to the Cornell-Dubilier Electronics Superfund Site.

FOR THE UNITED STATES OF AMERICA

IGNACIA MORENO
Assistant Attorney General
Environment and Natural Resources Division

United States Department of Justice

PETER K. KAUTSKY
RACHEL K. EVANS
Trial Attorneys
Environmental Enforcement Section
United States Department of Justice
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PAUL J. FISHMAN
United States Attorney

XXXXXXXXXXXXXXXXXX
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District of New Jersey
970 Broad Street, 7th Floor
Newark, NJ 07102

WALTER MUGDAN

Director

Emergency and Remedial Response Division Region 2

U.S. Environmental Protection Agency 290 Broadway

New York, New York 10007-1866

SARAH FLANAGAN

Assistant Regional Counsel

Office of Regional Counsel

U.S. Environmental Protection Agency 290 Broadway

New York, New York 10007-1866

LULU CHENG

Attorney-Adviser

U.S. Environmental Protection Agency Ariel Rios South (Mail Code: 2272A)

1200 Pennsylvania Ave, NW

Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of New Jersey v. Cornell-Dubilier Electronics, Inc., et al.*, relating to the Cornell Dubilier Electronics Superfund Site.

FOR THE STATE OF NEW JERSEY

Date: _____

XXXXXXXXXXXXXXXXX
Address

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of New Jersey v. Cornell-Dubilier Electronics, Inc., et al.*, relating to the Cornell Dubilier Electronics Superfund Site.

FOR DEFENDANT CORNELL-DUBILIER
ELECTRONICS, INC.

Date: _____

XXXXXXXXXXXXXXXXXX
Address

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

APPENDIX A

Map of Site

APPENDIX B**Financial Information Provided by Cornell-Dubilier Electronics, Inc.**

Federal Tax Returns for Kaplan Electronics, Inc. and Subsidiaries, including Cornell-Dubilier Electronics, Inc., for fiscal years ended August 31, 2002 through August 31, 2008.

Federal Tax Returns for CDE Holdings, Inc. and Subsidiaries, including Cornell-Dubilier Electronics, Inc., for fiscal years ended August 31, 2008 and August 31, 2009.

Internal Revenue Service Auditor's Letter dated January 2006 for fiscal year ended August 31, 2005.

IRS Auditor's Report dated August 8, 2007 for fiscal year ended August 31, 2006.

Consolidated Financial Reports for Kaplan Electronics, Inc. and Subsidiaries for the fiscal years ended August 31, 2002, 2003, 2005 and 2006.

Consolidated Financial Reports for Cornell-Dubilier Electronics, Inc. and Subsidiaries for:
1) fiscal years ended August 31, 2007 and 2008; 2) fiscal years ended August 31, 2008 and 2009;
and fiscal years ended August 31, 2009 and 2010.

Statement of Officer Compensation for Calendar 2006 to 2008 (prepared for EPA by Cornell-Dubilier Electronics, Inc.).

Cornell-Dubilier Electronics, Inc. and Subsidiaries statement of Cash Flows (Unaudited) for fiscal year ending August 31, 2008 and month ending September 30, 2008.

Cornell-Dubilier Electronics, Inc. and Subsidiaries Statement of Operations, Balance Sheet and Statement of Cash Flows (Unaudited) for nine months ending May 31, 2006.

APPENDIX C

Insurance Information Provided by Cornell-Dubier Electronics, Inc.

1. Settlement Agreements with respect to the Site and Global Settlements including the Site.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on June 4, 1996.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on September 19, 1997.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on December 22, 1997.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on July 31, 1998.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on October 1, 2002.

Settlement between **Ex 4 - CBI** CDE and FPE, Signed by **Ex 4 - CBI** on October 7, 2002.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on February 7, 2003.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on October 22, 2003.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on April 2, 2004.

Settlement between **Ex 4 - CBI** and CDE, signed by **Ex 4 - CBI** on March 5, 2004.

Settlement between **Ex 4 - CBI** CDE and FPE, signed by **Ex 4 - CBI** on May 27, 2004.

Settlement between **Ex 4 - CBI**
Ex 4 - CBI CDE and
 FPE, signed by **Ex 4 - CBI** on January 19, 2005.

Letter from Kingscroft Insurance Company Limited, Walbrook Insurance Company Limited, El Paso Insurance Company Limited, Lime Street Insurance Company Limited and Mutual Reinsurance Company Limited (Bermuda) (collectively, “KWELM”) to CDE and FPE, dated February 21, 2005, confirming agreed values of Notified Scheme Claim, with respect to KWELM Scheme of Arrangement.

Letter from Bermuda Fire & Marine Insurance Company Limited (“BFMIC”) to CDE and FPE, dated February 21, 2005, confirming agreed values of Notified Scheme Claim, with respect to BFMIC Scheme of Arrangement.

Settlement between **Ex 4 - CBI** for obligations of
Ex 4 - CBI and CDE, signed by **Ex 4 - CBI** on May 13, 2005

Settlement among **Ex 4 - CBI**, CDE and FPE,
 signed by **Ex 4 - CBI** on February 6, 2008.

Letter from OIC Run-off Limited (formerly The Orion Insurance Company P.L.C.) and the London and Overseas Insurance Company Limited (formerly The London and Overseas Insurance Company P.L.C.) to CDE and FPE, dated October 7, 2009, advising of payment in respect of Established Liability in Scheme of Arrangement.

Letter from PriceWaterhouse Coopers re Bryanston Ins. Co. Ltd. Scheme of Arrangement , dated August 18, 2006.

2. Insurance Policies

All insurance policies in effect from 1959 through September 1, 1983 issued to Cornell-Dubilier Electronics, Inc., and its corporate affiliates, including Federal Pacific Electric Company, UV Industries, Inc. Reliance Electric Company and Exxon Corporation , pursuant to which CDE has sought and/or is seeking coverage for the Site.

APPENDIX D

[reserved]

APPENDIX E**Home Insurance Co.**

HEC	954 3121	7/1/62 - 7/1/65
HEC	954 4303	7/1/65 - 7/1/68
HEC	9544304	??
HEC	9559165	7/1/68 - 7/1/71
HEC	9794317	7/1/71 - 7/1/72

Continental Casualty Co. (CNA)

RDX 8936473	7/1/72 - 7/1/75
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North River Insurance Co.

JU 0313	4/1/77 - 4/1/78
JU 0506	4/1/78 - 4/1/79

Wrenford Insurance Co. (reinsured and assumed by United Insurance Co.)

B49027	3/29/79 - 7/1/79
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Various London Market Insurers (Lloyds):

CK4294	5/21/59 - 7/1/62
CK4295	5/21/59 - 7/1/62

K56745	5/21/59 - 7/1/62
K56746	5/21/59 - 7/1/62
K56747	5/21/59 - 7/1/62

614/NC5606	3/29/79 - 7/1/79
614/NC5607	3/29/79 - 7/1/79
614/NC5608	3/29/79 - 7/1/79
614/NC7762	3/29/79 - 7/1/79
64/NC7760	3/29/79 - 7/1/79
64/NC7761	3/29/79 - 7/1/79

80BH1799	1/1/08 - 1/1/81
80BH1800	1/1/08 - 1/1/81
80BH1801	1/1/08 - 1/1/81
80BH1802	1/1/08 - 1/1/81
80BH1803	1/1/08 - 1/1/81
80BH1804	1/1/08 - 1/1/81
80BH1805	1/1/08 - 1/1/81
80BH1806	1/1/08 - 1/1/81
80BH1807	1/1/08 - 1/1/81

1HB 14830	1/1/81 - 1/1/82
1HB 14840	1/1/81 - 1/1/82
1HB 14850	1/1/81 - 1/1/82
1HB 14860	1/1/81 - 1/1/82
1HB 14870	1/1/81 - 1/1/82
1HB 14880	1/1/81 - 1/1/82
1HB 14890	1/1/81 - 1/1/82
1HB 14900	1/1/81 - 1/1/82
1HB 14910	1/1/81 - 1/1/82

2KA 16950	1/1/82 - 1/1/83
2KA 16960	1/1/82 - 1/1/83
2KA 16970	1/1/82 - 1/1/83
2KA 16980	1/1/82 - 1/1/83
2KA 16990	1/1/82 - 1/1/83
2KA 17000	1/1/82 - 1/1/83
2KA 17010	1/1/82 - 1/1/83
2KA 17020	1/1/82 - 1/1/83

3KA 06700	11/1/82 - 11/1/83
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3KA 06710	11/1/82 - 11/1/83
3KA 06720	11/1/82 - 11/1/83
3KA 06730	11/1/82 - 11/1/83
3KA 06740	11/1/82 - 11/1/83
3KA 06750	11/1/82 - 11/1/83
3KA 06760	11/1/82 - 11/1/83

APPENDIX F

ESCROW AGREEMENT

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THIS ESCROW AGREEMENT dated as of _____, 2011 (the "Agreement") is by and between Cornell-Dubilier Electronics, Inc., a Delaware corporation ("CDE") and RBS Citizens, N.A, a national banking association acting by and through its Institutional Services Group with an office at 870 Westminster Street, Providence, Rhode Island 02903, as escrow agent (the "Escrow Agent").

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WHEREAS, CDE has entered into a consent decree (the "Consent Decree") with the United States and the State of New Jersey, in the action captioned *United States v. Cornell-Dubilier Electronics Inc.*, which will be lodged in federal district court in New Jersey (the "Subject Action"); and

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WHEREAS, CDE is obligated under the Consent Decree to pay certain amounts into an interest-bearing escrow account (the "Escrow Account") to finance _____, which funds shall be held solely for the continued pursuit by CDE purposes of its environmental claims against its insurers, including claims pending satisfying CDE's litigation expenses incurred after creation of the Escrow Account in an insurance coverage action, *Home prosecuting the Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5192-96, MER-L-2772-02 Claims, as that term is defined in the Consent Decree, paying the fees, including tax preparation fees, associated with this Escrow Account, and MER-L463-05 (N.J. Super. Mercer County), and claims pending in insolvency proceedings involving certain insolvent insurers paying any taxes on interest earned on the funds in this Escrow Account; and

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WHEREAS, pursuant to the Consent Decree and the Settlement Agreement and Release, CDE is obligated to deposit into the Escrow Account the sum of \$ 3,250,000 to be held by the Escrow Agent upon the terms and conditions set forth herein (the "Escrow Amount"); Simultaneous with the execution of this Agreement, CDE will deposit the sum of \$ \$1,250,000. The remainder of the Escrow Amount shall be deposited by CDE into the Escrow Account in equal installments on the first and second anniversary of the effective date of the Consent Decree unless any withdrawal reduces the balance in the Escrow Account fall to below \$100,000 in which case CDE will within 20 days of such withdrawal deposit sufficient additional funds to bring the balance in the Escrow Account to \$200,000.

NOW, THEREFORE, in consideration of the premises promises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Establishment of Escrow.

(a) CDE hereby appoints the Escrow Agent to serve as agent for the purpose of holding and distributing the Escrow Account upon the terms and conditions herein set forth, and the Escrow Agent accepts such appointment subject to the terms and conditions hereof. Simultaneously with the execution of this Agreement, CDE has caused to be deposited in the Escrow Account the sum of \$ \$1,250,000. On the first and second anniversary anniversaries of the effective date of the Consent Decree, CDE shall deposit into the

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Escrow Account the additional sums of \$ \$1,000,000 (the "Anniversary Deposits"), provided however, that in the event that any withdrawal reduces the balance in the Escrow Account fallsto below \$100,000, CDE shall accelerate that portion of its Anniversary Deposits necessary to raise the balance in the Account to at least \$200,000 within 20 days of such withdrawal. Under no circumstance will CDE deposit more than the Escrow Amount into the Escrow Account. Notwithstanding anything to the contrary, in no event shall the Escrow Agent be liable for the sufficiency of the Escrow Account.

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(b) All funds in the Escrow Account shall be invested in U.S. Treasury Bills with maturities no longer than thirty (30) days. Investment earnings received on any investment shall be credited to the FundEscrow Account and may be reinvested as provided herein. The Escrow Agent shall have no liability for any loss incurred on any investment. In the event and to the extent any such investments are unavailable with respect to any portion of the Escrow Account (including unavailability due to inadequate minimum amounts) the Escrow Agent shall otherwise have no duty to invest (or otherwise pay interest on) such Escrow Funds.

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(c) Promptly upon the establishment of the Escrow Account, the Escrow Agent shall provide CDE with an escrow statement showing the initial balance in the Escrow Account. Thereafter, the Escrow Agent will provide to CDE quarterly statements showing the balance in the Escrow Account.

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2. 2. Distribution of Funds from the Escrow Account.

Funds shall be distributed from the Escrow Account in accordance with the following terms and conditions:

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(a) The Escrow Agent shall return to CDE all funds in the Escrow Account within 20 days of receiving notice from CDE certifying that the court in the Subject Action has declined to enter the Consent Decree.

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(b) The Escrow Agent shall pay any invoice within 20 days of receiving noticeit from CDE's Representative certifyingCDE, provided that the invoice has been approved for is signed by CDE or its authorized representative, and states the amount of the payment in accordance with, the purpose of the payment, and the termsidentity of the Consent Decreepayee.

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(c) b) When any distribution from the Escrow Account brings the balance below \$100,000, the Escrow Agent shall immediately notify CDE and advise CDE of the amount of deposit necessary to bring the balance above \$200,000.

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b.(c) Upon receiving notice from CDE that thirty (30) days have elapsed since (i) the United States has determined to withdraw from the Consent Decree, (ii) the court has determined not to enter the Consent Decree (and all appellate rights have been exhausted or have expired), or (iii) entry of the Consent Decree has been reversed on appeal (and all appellate rights have been exhausted or have expired), the Escrow Agent shall disburse to CDE and FPE all funds (principal and interest) in the Escrow FundAccount, to the extent of available cash promptly upon receipt of

such written notice or, to the extent such funds are invested, within one business day after receipt by the Escrow Agent of the proceeds thereof upon maturity of such investments. Payment shall be made to Foley Hoag LLP on behalf of Cornell-Dubilier Electronics, Inc. and shall be delivered to Robert S. Sanoff, Foley Hoag LLP, Seaport West, 155 Seaport Boulevard, Boston, MA 02210.

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3. 3. Right to Rely; Indemnity; Performance; Limitation of Liability of Escrow Agent.

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(a) CDE acknowledges and agrees that the Escrow Agent (i) shall not be responsible for any of the agreements referred to herein, including the Consent Decree, but shall only be obligated for the performance of such duties as are specifically set forth in this Agreement; (ii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve any expense or liability on its part unless it shall have been furnished with acceptable indemnification as determined in its sole discretion; (iii) shall be entitled to rely on any document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons or on other evidence or information deemed by it to be reliable and shall have no responsibility for determining the accuracy thereof; (iv) shall have no responsibility whatsoever with respect to the undertakings of any other party hereto or to any notices or undertakings of anyone not a party hereto; and (v) may consult counsel satisfactory to it, including in-house counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel. With respect to any notice, instruction, including without limitation any wire transfer instruction set forth herein or set forth in a separate written instruction, communication or other action or inaction that may be taken by CDE hereunder, the Escrow Agent shall be entitled to rely upon written instructions executed and delivered jointly by CDE Representatives as defined in Section 13 below.

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(b) CDE agrees to indemnify and hold harmless the Escrow Agent and each of its directors, officers and agents appointed and acting in accordance with this Agreement (collectively, the "Indemnified Parties") against all claims, losses, damages, costs, penalties, fines and reasonable expenses (including reasonable expenses of the Escrow Agent's legal counsel) which may be paid, incurred or suffered by any Indemnified Party by reason of or as a result of the Escrow Agent's compliance with its duties set forth in this Agreement, or any written instructions delivered jointly to the Escrow Agent by the parties pursuant hereto, except to the extent that any such claim, loss, damage, cost, penalty, fine or expense results from fraud, gross negligence or wilful misconduct on the part of such Indemnified Party. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damages.

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CDE agrees to assume any and all obligations imposed now or hereafter by any applicable tax law with respect to the payment of funds from the Escrow Account, and to indemnify and hold the Escrow Agent harmless from and against any taxes, additions for late payment, interest, penalties and other expenses, that may be assessed against the Escrow Agent in any such payment or other activities under this Agreement. CDE undertakes to instruct the Escrow Agent in writing with respect to the Escrow Agent's responsibility for withholding and other taxes, assessments or other governmental charges, certifications and governmental reporting in connection with its acting as Escrow Agent under this Agreement. CDE agrees to

indemnify and hold the Escrow Agent harmless from any liability on account of taxes, assessments or other governmental charges, including without limitation the withholding or deduction or the failure to withhold or deduct the same, any liability for failure to obtain proper certifications or to properly report to governmental authorities, to which the Escrow Agent may be or become subject in connection with or which arises out of this Agreement, including costs and expenses (including reasonable legal fees and expenses), interest and penalties. Notwithstanding the foregoing, in no event shall CDE be required to indemnify the Escrow Agent for any liability arising out of gross negligence or willful misconduct on the part of the Escrow Agent.

The indemnifications set forth in this Section 3(b) shall survive the termination of (and any resignation or removal of the Escrow Agent under) this Agreement.

(c) It is further agreed that if any controversy arises, between the parties hereto or with any third person, with respect to the Escrow Account or any part of the subject matter of this Agreement, its terms or conditions, the Escrow Agent shall not be required to determine the same or take any action in the premises, but may await the settlement of any such controversy by final appropriate legal proceedings or otherwise as it may require, notwithstanding anything in this Agreement to the contrary, and in such event the Escrow Agent shall not be liable for interest or damages. The Escrow Agent shall not be obligated to institute or defend any legal proceedings which relate to the Escrow Fund Account.

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(d) The Escrow Agent is not responsible for the genuineness, validity or title of any property received by it from time to time pursuant to this Agreement.

(e) The Escrow Agent shall have no liability for any actions or omissions of any other party, or any failure or delay by any other party in performing or observing its duties hereunder.

(f) CDE hereby certifies that its federal tax identification number is 22-0841070. The Escrow Agent shall be entitled to request any party to whom funds are distributed from the Escrow Account a certified taxpayer identification number on Form W-9. In the event the Escrow Agent does not receive such certified taxpayer identification information on a timely basis, CDE acknowledges that the Internal Revenue Code, as amended from time to time, may require withholding of a portion of any interest or other income earned on the investment of the Escrow Account.

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4. 4. Resignation, Removal, Successor.

(a) The Escrow Agent may resign as escrow agent under this Agreement and thereby become discharged from the obligations hereby created, by notice in writing given to CDE not less than thirty days before such resignation is to take effect.

(b) The Escrow Agent may be removed at any time by an instrument in writing delivered to the Escrow Agent and signed by CDE.

(c) If at any time hereafter the Escrow Agent shall give notice of its resignation pursuant to Section 4(a) hereof, shall be removed pursuant to Section 4(b) hereof, or shall be

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dissolved or otherwise become incapable of acting, or the position of the Escrow Agent shall become vacant for any other reason, CDE shall promptly appoint a successor Escrow Agent. Upon such appointment such successor shall execute, acknowledge and deliver to its predecessor, and also to CDE, an instrument in writing accepting such appointment hereunder and agreeing to be bound by the terms and provisions of this Agreement. Thereupon such successor Escrow Agent, without any further act, shall become fully vested with all the rights, immunities, and powers, and shall be subject to all of the duties and obligations of its predecessor and such predecessor Escrow Agent shall promptly deliver the Escrow Account to such successor pursuant to written instructions from CDE.

(d) In the event that a successor Escrow Agent has not been appointed within thirty days of the date of any such resignation, removal, dissolution, incapacity or vacancy, the Escrow Agent or its legal representative shall deposit the Escrow Account with the clerk Foley Hoag LLP on behalf of a court of competent jurisdiction CDE and shall interplead all of the parties hereto be delivered to Robert S. Sanoff, Foley Hoag LLP, Seaport West, 155 Seaport Blvd, Boston, MA 02210. Upon so depositing the Escrow Account and filing its pleading, this Agreement shall terminate as to the Escrow Agent.

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(e) In the event the Escrow Agent is merged or consolidated with any other entity, and as a result thereof the Escrow Agent ceases to exist as a separate entity, or the Escrow Agent sells substantially all of its corporate trust business to another entity, then such surviving entity, without any further act, shall become fully vested with all the rights, immunities, and powers, and shall be subject to all of the duties and obligations of the Escrow Agent.

5. Termination. This Agreement shall terminate upon the disbursement of all funds in accordance with Section 2(a) or (b) hereof.

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6. Fees. CDE agrees to pay, and shall be solely responsible for, all fees, disbursements and other expenses charged by the Escrow Agent for the performance of the Escrow Agent's services hereunder, which may be changed on an annual basis. The current fee schedule is attached hereto as Exhibit A. The Escrow Agent shall be entitled to reimbursement on demand for all expenses incurred in connection with the administration of this Agreement or the Escrow Account created hereby which are in excess of its compensation for normal services hereunder, including without limitation, payment of any legal fees and expenses incurred by the Escrow Agent in connection with resolution of any claim by any party hereunder. Upon CDE's written instruction, in accordance with Section 2(a), property in the Escrow Account may be used to pay any such fees, disbursements or other expenses.

7. Amendments and Supplements. This Agreement may not be amended, modified or supplemented by the parties hereto in any manner, except by an instrument in writing signed by or on behalf of CDE, the Escrow Agent, the United States, and the State of New Jersey. In such event, the Escrow Agent shall be entitled to receive and rely conclusively upon a certificate from CDE that the persons signing on behalf of the United States and the State of New Jersey are their authorized representatives.

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8. No Waiver. The terms and conditions of this Agreement may be waived only by a written instrument signed by the party waiving compliance. The failure of any party hereto to

enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

9. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of The Commonwealth of Massachusetts, without regard to its principles of conflicts of laws.

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10. Consent to Jurisdiction and Service. CDE and FPE hereby absolutely and irrevocably consent~~consents~~ and submit~~submits~~ to the jurisdiction of the courts in the Commonwealth of Massachusetts in connection with any actions or proceedings arising out of or relating to this Agreement. In any such action or proceeding brought by the Escrow Agent, CDE and FPE hereby absolutely and irrevocably waive~~waives~~ personal service of any summons, complaint, declaration or other process and hereby absolutely and irrevocably agree~~agrees~~ that the service thereof may be made by certified or registered first-class mail directed to CDE or FPE, as the case may be, at their respective addresses~~at its address~~ in accordance with Section 1513 hereof.

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11. Force Majeure. The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters.

12. Reproduction of Documents. This Agreement and all documents relating hereto, previously or hereafter furnished, may be reproduced by any photographic, photostatic, microfilm, optical disk, micro-card, miniature photographic or other similar process. The parties agree that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by a party in the regular course of business, and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

13. Notice. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered by hand, sent by email with confirmation of receipt requested, sent via a reputable courier service with confirmation of receipt requested, or mailed by registered or certified mail (postage prepaid and return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice), and shall be deemed given on the date on which delivered by hand or otherwise on the date of receipt as confirmed:

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To CDE's Representative:

Victor Whitworth
 Cornell-Dubilier Electronics, Inc.
 140 Technology Place
 Liberty, SC 29657
 vwhitworth@cde.com

With copy to:

Robert S. Sanoff
 Foley Hoag LLP
 155 Seaport Blvd
 Boston, MA 02210
 rsanoff@foleyhoag.com

To the Escrow Agent:

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[ADD ADDRESS OF ESCROW AGENT]

A party may change its representative by providing 10 days written notice to the other sideparty.

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14. Construction of Agreement. A reference to a Section shall mean a Section in this Agreement unless otherwise expressly stated. The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement which shall be considered as a whole. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation."

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15. Entire Agreement, Assignability, etc. This Agreement and other agreements among the parties hereto as contemplated by or referred to herein constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all other prior agreements and understandings, both written and oral, between the parties with respect to such subject matter. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder, except as otherwise expressly provided herein and shall not be assignable by operation of law or otherwise.

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16. Validity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, each of which shall remain in full force and effect.

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17. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same Agreement.

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19. **18. Disputes.** In the event a dispute should arise, the Escrow Agent shall be entitled to refrain from taking any action and shall be entitled to petition a court of competent jurisdiction for instruction.

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IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be executed as an agreement under seal as of the date first written above.

CORNELL DUBILIER ELECTRONICS, INC.

By: _____
Name: Victor Whitworth
Title: Chief Financial Officer

[ESCROW AGENT]

By: _____
Name: _____
Title: _____

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